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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,956

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Thorsten Lohmar

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EXAMINER

RECEK, JASON D

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/597,956	Applicant(s) LOHMAR ET AL.	
	Examiner JASON RECEK	Art Unit 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 20-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 20-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>14 August 2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to application 10/597956 filed on May 1st 2007 in which claims 1-16 and 20-25 are presented for examination.

Status of Claims

Claims 1-16 and 20-25 are pending, of which claims 1, 20, 22 and 25 are in independent form.

Claims 20-24 are currently rejected under 35 U.S.C. 101.

Claims 1-16 and 20-25 are currently rejected under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 20-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Regarding claims 20 and 22, they are directed towards an apparatus however the claims do not recite any physical hardware elements. The "units" recited by the claims can be interpreted as purely software. Software per se is not patentable subject matter. See MPEP 2106.01.

Regarding claims 21 and 23-24, they do not add limitations that would render the claims patentable. Therefore they are also rejected since they depend from a rejected claim.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 7-16 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsumi et al. US 2002/0095635 A1.

Regarding claim 1, Tatsumi discloses “transmitting the content data to the plurality of clients” and “coupling the plurality of clients to a proxy server to initiate post-processing transactions” (paragraph 19), “the broadcaster communicating with the proxy server to provide sufficient information to handle any of the port-processing transactions requested” (paragraph 20), “determining ... a plurality of available proxy servers”, “randomly selecting” and “contacting ... the selected proxy server” as selecting a path (paragraph 26). Tatsumi does not explicitly disclose a “proxy server” however Tatsumi teaches a device that performs a similar function (Fig. 1) and is in bidirectional communication with the clients. It would have been obvious to one of ordinary skill in the art at the time of the invention to put this functionality into a proxy

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server. This is merely the combination of known elements according to their established function in order to yield a predictable result.

Regarding claim 2, Tatsumi discloses “contact intervals ... specifying the time period in which the proxy servers may be contacted” as specifying a retransmission waiting time (paragraphs 121-124).

Regarding claim 3, Tatsumi discloses “sending ... information pertaining to content data that has or has not been correctly received” (paragraph 117).

Regarding claim 4, Tatsumi discloses “sending ... information to reconstruct the content data” (paragraphs 157-158).

Regarding claim 5, Tatsumi discloses “sending ... a notification that the content data was either successfully or unsuccessfully received” (paragraph 118).

Regarding claim 7, Tatsumi discloses “prompts within the content data” (paragraph 114).

Regarding claim 8, Tatsumi discloses “purchase of an object or service” (paragraph 114).

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Regarding claim 9, Tatsumi discloses “a request to obtain additional content data” (paragraph 97).

Regarding claim 10, Tatsumi discloses “a URL within ... the data” (paragraph 65).

Regarding claim 11, Tatsumi does not explicitly disclose “providing, by the broadcaster to each of the proxy servers, at least a portion of the content data” however this is taught by Tatsumi as transferring data to the retransmitting (proxy server) for the purpose of retransmitting (paragraph 157).

Regarding claim 12, Tatsumi discloses “information ... is in embedded in the broadcast” (paragraph 64).

Regarding claim 13, Tatsumi discloses “contact intervals ... is embedded in the broadcast” as a receiving end time which indicates the beginning of a contact interval (paragraph 65).

Regarding claim 14, Tatsumi discloses “selection based on an attribute of the plurality of clients” (paragraph 98).

Regarding claim 15, Tatsumi discloses “multicast” (paragraph 68).

Regarding claim 16, Tatsumi does not explicitly disclose "adjusting the number of available proxy servers ... based on the number of post-processing transactions" however it is well known in the art to adjust resources based on usage requirements and thus the modification of Tatsumi to adjust the number of retransmitting stations (proxy servers) based on demand is merely applying that which is well known in the art in order to yield a predictable result (system capability to handle required load).

Regarding claims 20, 22, and 25, they are apparatus claims that correspond to the method of claim 1, therefore they are rejected for similar reasons.

Regarding claims 21 and 23, they correspond to the method of claim 2, therefore they are rejected for similar reasons.

Regarding claim 24, Tatsumi discloses "determines one or more post-processing transactions" as setting a retransmission request permission (paragraph 64).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tatsumi in view of Hudson et al. US 2003/0204613 A1.

Regarding claim 6, Tatsumi does not explicitly disclose "a digital rights manager" however this is taught by Hudson (paragraph 70). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Tatsumi with the DRM

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taught by Hudson for the purpose of distributing content. A DRM is well known in the art and yields predictable results (as evidenced by Hudson). Thus the combination is merely the combination of known elements according to their established function in order to yields a predictable result.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Chiu et al. US 6,526,022 B1 discloses using repair heads (i.e. proxy servers) for reliable multicast transmissions (Fig. 1).

Walsh US 2005/0182842 A1 discloses re-transmission of missing data.

Cinghita et al. US 2008/0056256 A1 discloses a system for broadcasting data over a unidirectional network that reduces required bandwidth and is easily scalable (abstract).

Van Renesse US 6,724,770 B1 discloses using buffers (i.e. proxy servers) to store data that may be lost during broadcast transmissions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON RECEK whose telephone number is (571)270-1975. The examiner can normally be reached on Mon - Fri 9:00am-5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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